

OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshb



NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **March 15, 2007**, at 10:00 a.m.
in Tower 8 of the County Administration Center
1600 Pacific Highway, San Diego, California 92101.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **March 15, 2007**, following the Public Meeting
in the Tower 8 of the County Administration Center
1600 Pacific Highway, San Diego, California 92101.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **March 15, 2007**, following the Public Hearing
in the Tower 8 of the County Administration Center
1600 Pacific Highway, San Diego, California 92101.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders; Ship Building, Ship Repairing, and Ship Breaking Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **March 15, 2007**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 32
Section 1740(b)
Storage and Use of Fuel Gas Cylinders

2. TITLE 8: **SHIP BUILDING, SHIP REPAIRING, AND SHIP BREAKING SAFETY ORDERS**
Chapter 4, Subchapter 18, Article 8
Section 8397.16
Shipyard Safety Orders, Land-Side Fire Protection—Update of National Fire Protection Association (NFPA) Standards

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 32
Section 1740(b)
Storage and Use of Fuel Gas Cylinders

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This proposal would revise an existing requirement regarding the storage and use of gas cylinders associated with various operations including but not limited to welding and cutting activities. The current standard, California Code of Regulations, Title 8, Section 1740(b), says in part that “Gas cylinders shall be stored and used with the valve end up.” The proposal would make this provision clear that insofar as use and storage is concerned, the valve-end-up requirement applies to acetylene and fuel gases. In this way, the proposal prevents the standard from being ambiguous in its meaning.

This rulemaking action is being initiated as a result of Occupational Safety and Health Standards Board (Board) Petition File No. 472, by Mr. Michael Sterrett (Petitioner), Chair, Associated General Contractors of California (AGC) Safety and Health Council. The Petitioner requested the Board amend Title 8, Section 1740(b) to clarify that fuel gas cylinders, rather than all gas cylinders, must be stored and used with valve end up, thereby excluding oxygen cylinders from this requirement. The petition was granted by the Board on October 20, 2005.

The proposed change to Section 1740(b), although exclusive to acetylene and fuel gases, is consistent with existing Title 8, General Industry Safety Orders, Section 4845, 29 CFR 1926.350(a), Gas Welding and Cutting, 29 CFR 1910.253(a)(3)(iii) and (a)(5)(iii)(A), Oxygen-Fuel Gas Welding and Cutting and the American National Standards Institute (ANSI) Z49.1-2005 standard, Safety in Welding, Cutting and Allied Processes. For example, acetylene is a compressed gas that is used as a welding and cutting fuel and is stored in a liquid state. When the valve is opened and pressure is released, a portion of the liquefied acetylene turns to gas. This gas is then used by the device that the cylinder is connected to.

Acetylene, when placed in the horizontal position, could become dislodged from acetone and binders and form highly unstable explosive pockets that are subject to polymerization, thus permitting acetone to enter the regulator resulting in a fire and/or explosion. Therefore, using and storing the tank in any position other than upright can be extremely dangerous. However, non fuel gases, such as oxygen which are stored in and expelled from the cylinder in a gaseous state, cannot enter the cylinder regulator as anything but a gas incapable of explosion regardless of the physical orientation of the cylinder.

Consultation with safety representatives from AGC, and Airgas Corporation, a leading supplier of industrial gases, indicate support of the Petitioner’s request and the proposed amendment. The proposal deviates from the Petitioner’s proposal to the extent that it clarifies that the amendment applies to but not limited to welding and cutting fuel gas and acetylene. Article 32, pertains to gases associated with welding (joining metal) and cutting (cutting through metal) operations. By including the word fuel before “gas cylinders” in subsection (b), it will avoid requiring non-fuel gas cylinders that do not present the same potential hazards from having to be unnecessarily regulated.

The proposed amendment is as follows:

Section 1740. Storage and Use of Cylinders

This section contains standards addressing the safe use and storage of compressed gas cylinders including fuel gas cylinders, including but not limited to, protection against heat, storage, portable service use, handling and storage near energized conductors.

Subsection (b) requires all gas cylinders to be stored and used with the valve end up and that cylinders containing oxygen, acetylene or fuel gases shall not be taken into confined spaces. A revision is proposed to add the words “Acetylene and fuel” in front of “gas cylinders” and also include examples of fuel gas cylinders. The effect of the proposed revision would be to clarify to the employer that acetylene and fuel gas cylinders are to be used and stored valve end up (in the vertical/upright position), to ensure that they will safely dispense the gas they contain, and not backflow into the regulator, which could result in fire and/or explosion.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. The proposal is a technical clarification to ensure that, consistent with Federal OSHA standards, National Consensus Standards and the General Industry Safety Orders, the employer will understand that only fuel gas cylinders must be used and stored in an upright position.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these proposed amendments do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. TITLE 8: **SHIP BUILDING, SHIP REPAIRING, AND SHIP BREAKING SAFETY ORDERS**

Chapter 4, Subchapter 18, Article 8

Section 8397.16

Shipyard Safety Orders, Land-Side Fire Protection—Update of National Fire Protection Association (NFPA) Standards

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt standards at least as effective as federal standards addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated standards that address Updating National Consensus Standards in OSHA's Standard for Fire Protection in Shipyard Employment on October 17, 2006, as 29 Code of Federal Regulations, Sections 1915.5, 1915.505 and 1915.507. The Board is relying on the explanation of the provisions of the federal standards in Federal Register, Volume 71, No. 200, pages 60932-60934, Proposed Rule, October 17, 2006, and Federal Register, Volume 71, No. 200, pages 60843-60847, Direct Final Rule as the justification for the Board's proposed rulemaking action. The Board proposes to adopt standards which are the same as the federal standard except for editorial and format differences.

On September 15, 2004, OSHA issued a Final Rule for fire protection in shipyard employment that incorporated by reference 19 National Fire Protection Association (NFPA) standards. Eleven of those NFPA standards and an additional NFPA standard have been updated since the final rule was published (the updated editions are shown in brackets). They are as follows: NFPA 1981-1997 [2002] Standard for Open Circuit Self Contained Breathing Apparatus for Fire and Emergency Services, NFPA 10-1998 [2002] Standard for Portable Fire Extinguishers, NFPA 72-1999 [2002] National Fire Alarm Code, NFPA 14-2000 [2003] Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems, NFPA 13-1999 [2002] Standard for the Installation of Sprinkler Systems, NFPA 750-2000 [2003] Standard on Water Mist Fire Protection Systems, NFPA 11-1998 Standard for Low Expansion Foam and NFPA 11A-1999 Standard for Medium and High Expansion Foam Systems combined into NFPA 11-2005 Standard for Low-, Medium-, and High-Expansion Foam, NFPA 12A-1997 [2004] Standard on Halon 1301 Fire Extinguishing Systems, NFPA 2001-2000 [2004] Standard on Clean Agent Fire Extinguishing Systems, NFPA 1403-1997 [2002] Standard on Live Fire Training Evolutions, and NFPA 12-2000 [2005] Standard on Carbon Dioxide Extinguishing Systems.

These NFPA standards are contained in Title 8 Sections 8397.12 (Fire Response), 8397.13 (Training), and 8397.16 (Land-Side Fire Protection). Board staff notes that Title 8 Section 8397.12(e)(3)(E) currently references the NFPA 1981-2002 Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire and Emergency Services and Section 8397.13(d)(8) currently references the NFPA 1403-2002 Standard on Live Fire Training Evolutions and therefore requires no updating to be at least as effective as the federal counterpart standard contained in 29 CFR Section 1915(e)(3)(V) and (d)(4)(xix), respectively. However, Title 8 standards contained in Section 8397.16, Land-Side Fire Protection, require updating to the most current editions of the NFPA. Therefore, to be at least as effective as federal OSHA with regard to land-side fire protection standards, California proposes to

amend Section 8397.16 to incorporate by reference all of the aforementioned NFPA standards except NFPA 1981-2002 which is already contained in Title 8, Section 8397.12.

The Board staff proposes to delete references to “private hydrant” contained in subsection (d)(1) NFPA 14 2000 consistent with the revised title of the 2003 edition of the NFPA 14.

The proposed standards are substantially the same as the final rule promulgated by Federal OSHA. Therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code; however, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written and oral comments at the public hearing is to: 1) identify any clear and compelling reasons for California to deviate from the federal standard; 2) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and, 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(3). The standards may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board’s discretion.

DOCUMENTS INCORPORATED BY REFERENCE

1. NFPA 10-2002, Standard for Portable Fire extinguishers
2. NFPA 14-2003, Standard for the Installation of Standpipe and Hose Systems
3. NFPA 72-2002, National Fire Alarm Code
4. NFPA 13-2002, Standard for the Installation of Sprinkler Systems
5. NFPA 750-2003, Standard on Water Mist Fire Protection Systems
6. NFPA 11-2005, Standard for Low-, Medium-, and High-Expansion Foam
7. NFPA 12-2005, Standard on Carbon Dioxide Extinguishing Systems
8. NFPA 12A-2004, Standard on Halon 1301 Fire Extinguishing Systems
9. NFPA 2001-2004, Standard on Clean Agent Fire Extinguishing Systems

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

According to the federal preamble, this rulemaking would impose no additional costs on any private or public sector entity and does not meet any of the criteria for an economically significant or major rule specified by the Executive Order or relevant federal statutes. This action includes updated references to NFPA standards. Federal OSHA compared the older versions of the NFPA standards with the new versions via side-by-side analyses. Based on federal OSHA’s findings, they concluded that incorporating the new versions of the NFPA standards will not impose any additional costs on any private or public sector entity. The Board staff believes the same is true for private entities in California. There are no public (state governmental) entities involved in ship building, ship repairing or

ship breaking activities in California. The proposed updating of NFPA standards is for the most part consistent with the land-side fire protection activities conducted by the private sector.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated (see explanation under Cost Estimates of Proposed Action).

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than March 9, 2007. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on March 15, 2007, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman

TITLE 8

CONSTRUCTION SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 4, ARTICLE 32

SECTION 1740(B)

STORAGE AND USE OF FUEL GAS CYLINDERS

TITLE 8

SHIP BUILDING, SHIP REPAIRING, AND SHIP BREAKING SAFETY

ORDERS

CHAPTER 4, SUBCHAPTER 18, ARTICLE 8

SECTION 8397.16

SHIPYARD SAFETY ORDERS, LAND-SIDE FIRE PROTECTION—

UPDATE OF NATIONAL FIRE PROTECTION ASSOCIATION (NFPA)

STANDARDS